

Department of the Army, DoD

§ 536.94

1962, 10 U.S.C. 2737, 76 Stat. 767, commonly called the "Non-Scope Claims Act (NSCA)."

§ 536.91 Scope for claims under the Non-Scope Claims Act.

(a) This subpart applies worldwide and prescribes the substantive bases and special procedural requirements for the administrative settlement and payment of not more than \$1,000 for any claim against the United States for personal injury, death or damage to, or loss of, property caused by military personnel or civilian employees, incident to the use of a U.S. vehicle at any location, or incident to the use of other U.S. property on a government installation, which claim is not cognizable under any other provision of law.

(b) For the purposes of this subpart, a "government installation" is a facility having fixed boundaries owned or controlled by the government, and a "vehicle" includes every description of carriage or other artificial contrivance used, or capable of being used, as means of transportation on land (1 U.S.C. 4).

(c) Any claim in which there appears to be a dispute about whether the employee was acting within the scope of employment will be considered under subparts C, D, or F of this part. Only when all parties, including an insurer, agree that there is no "in scope" issue will the claim be considered under this subpart.

§ 536.92 Claims payable under the Non-Scope Claims Act.

(a) *General.* A claim for personal injury, death, or damage to, or loss of, property, real or personal, is payable under this subpart when:

(1) Caused by negligent or wrongful acts or omissions of Department of Defense or Department of the Army (DA) military personnel or civilian employees, as listed in § 536.23(b):

(i) Incident to the use of a vehicle belonging to the United States at any place or;

(ii) Incident to the use of any other property belonging to the United States on a government installation.

(2) The claim is not payable under any other claims statute or regulation

available to the DA for the administrative settlement of claims.

(b) *Personal injury or death.* A claim for personal injury or death is allowable only for the cost of reasonable medical, hospital, or burial expenses actually incurred and not otherwise furnished or paid by the United States.

(c) *Property loss or damage.* A claim for damage to or loss of property is allowable only for the cost of reasonable repairs or value at time of loss, whichever is less.

§ 536.93 Claims not payable under the Non-Scope Claims Act.

Under this subpart, a claim is not payable that:

(a) Results in whole or in part from the negligent or wrongful act of the claimant or his or her agent or employee. The doctrine of comparative negligence does not apply.

(b) Is for medical, hospital, or burial expenses furnished or paid by the United States.

(c) Is for any element of damage pertaining to personal injuries or death other than as provided in § 536.93(b). All other items of damage, for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement and pain and suffering are not payable.

(d) Is for loss of use of property or for the cost of substitute property, for example, a rental.

(e) Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is in part legally recoverable, the part recoverable by the claimant is not payable.

(f) Is a subrogated claim.

(g) In some circumstances some claims may be partially payable. See DA Pam 27-162, paragraph 5-4 for more information on claims that may be partially payable.

§ 536.94 Settlement authority for claims under the Non-Scope Claims Act.

(a) *Settlement authority.* The following are delegated authority to pay up to

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\$1,000 in settlement of each claim arising out of one incident and to disapprove a claim presented in any amount under this subpart:

(1) The Judge Advocate General (TJAG);

(2) The Assistant Judge Advocate General (TAJAG);

(3) The Commander USARCS;

(4) The Judge Advocate (JA) or Staff Judge Advocate (SJA) or chief of a command claims service; and

(5) The head of an area claims office (ACO).

(b) *Approval authority.* The head of a claims processing office (CPO) with approval authority is delegated authority to approve and pay, in full or in part, claims presented for \$1,000 or less and to compromise and pay, regardless of amount claimed, an agreed award of \$1,000 or less.

(c) *Further guidance.* Authority to further delegate payment authority is set forth in § 536.3(g)(1) of this part. For further discussions also related to approval, settlement and payment authority, see also paragraphs 2-69 and 2-71 of DA Pam 27-162.

§ 536.95 Reconsideration of Non-Scope Claims Act claims.

The provisions of § 536.89 addressing reconsideration apply and are incorporated herein by reference. If the claim is not cognizable under the Federal Tort Claims Act, appellate procedures under the Military Claims Act or NGCA apply.

Subpart F—Claims Cognizable Under the National Guard Claims Act

§ 536.96 Statutory authority for the National Guard Claims Act.

The statutory authority for this subpart is contained in the Act of September 1960 (32 U.S.C. 715, 74 Stat. 878), commonly referred to as the "National Guard Claims Act" (NGCA), as amended by Public Law 87-212, (75 Stat. 488), September 1961; Public Law 90-486, (82 Stat. 756), August 1968; Public Law 90-521, (82 Stat. 874), September 1968; Public Law 90-525, (82 Stat. 877), September 1968; Public Law 91-312, (84 Stat. 412), July 1970; Public Law 93-336, (88 Stat.

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291), July 1974; and Public Law 98-564, (98 Stat. 2918), October 1984.

§ 536.97 Scope for claims under the National Guard Claims Act.

This subpart applies worldwide and prescribes the substantive bases and special procedural regulations for the settlement of claims against the United States for death, personal injury, damage to, or loss or destruction of property.

(a) Soldiers of the Army National Guard (ARNG) can perform military duty in an active duty status under the authority of Title 10 of the United States Code, in a full-time National Guard duty or inactive-duty training status under the authority of Title 32 of the United States Code, or in a state active duty status under the authority of a state code.

(1) When ARNG soldiers perform active duty, they are under federal command and control and are paid from federal funds. For claims purposes, those soldiers are treated as active duty soldiers. The NGCA, 32 U.S.C. 715, does not apply.

(2) When ARNG soldiers perform full-time National Guard duty or inactive-duty training, they are under state command and control and are paid from federal funds. The NGCA does apply, but as explained in paragraph (c) of this section it is seldom used.

(3) When ARNG soldiers perform state active duty, they are under state command and control and are paid from state funds. Federal claims statutes do not apply, but state claims statutes may apply.

(b) The ARNG also employs civilians, referred to as technicians and employed under 32 U.S.C. 709. Technicians are usually, but not always, ARNG soldiers who perform the usual 15 days of annual training (a category of full-time duty) and 48 drills (inactive-duty training) per year.

(c) NGCA coverage applies only to ARNG soldiers performing full-time National Guard duty or inactive-duty training and to technicians. However, since the NGCA's enactment in 1960, Congress has also extended Federal Tort Claims Act (FTCA) coverage to these personnel.